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International Association of Machinists and Aerospace Workers, District Lodge 160, Local Lodge 289, AFL-CIO and SSA Marine and International Longshore and Warehouse Union, Local 32, AFL-CIO. Case 19-CD-490

June 30, 2006

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND KIRSANOW

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act (the Act). The charge in this proceeding was filed by SSA Marine (the Employer) on December 5, 2005, alleging that International Association of Machinists and Aerospace Workers, District Lodge 160, Local Lodge 289, AFL-CIO (IAM) violated Section 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by International Longshore and Warehouse Union, Local 32, AFL-CIO (ILWU).

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The parties stipulated that the Employer is a Washington corporation, with an office and a place of business in the Port of Everett in Everett, Washington, where it is engaged in the business of cargo transportation and handling. They also stipulated that the Employer annually purchases and receives goods and services valued in excess of \$50,000 directly from suppliers located outside the State of Washington. The parties further stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. Finally, the parties stipulated, and we find, that IAM and ILWU are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

For the last 40 years, the Employer and its predecessors have operated and managed terminal and stevedore operations at the Port of Everett, located on the Puget Sound in Washington. These operations have required the Employer to use a range of stevedoring equipment through the years. During the 1960s and 1970s, a water crane and several fork lifts were permanently stationed

by the Employer at the Port of Everett. This permanently-stationed equipment was, at least in part, serviced and maintained by ILWU-represented workers based in Everett itself. As the port entered economic decline in the 1980s and 1990s, the permanently-stationed stevedoring equipment was removed. The Employer instead relied on equipment rotated from other ports on the Puget Sound to perform its operations in Everett. Those machines were serviced and maintained by IAM-represented mechanics, who shuttled to Everett from Seattle and other ports around the Puget Sound. IAM-represented mechanics continue to be based in Seattle, where they receive assignments and training and have available a library of reference materials related to their work.

In 1999, the Employer foresaw increased demand for stevedoring services in Everett. This expectation led to the introduction of new cargo-handling machinery at the Employer's Everett facility: a 100-ton Gottwald mobile harbor crane and two reach stackers.¹ The evidence does not indicate that the Employer employed any ILWU-represented employees qualified to service and maintain the new equipment at the time it was put into use. The Employer assigned the service and maintenance of these machines to its IAM-represented mechanics. Two of these IAM-represented mechanics were sent to Germany for manufacturer-sponsored training on the repair and maintenance of the Gottwald crane. This training lasted 2 to 3 weeks and primarily involved going over the manuals specific to the Gottwald crane. The evidence indicates that the training received by IAM-represented employees on the Gottwald cranes was for the limited purpose of familiarizing them with the contents of specific manuals, and not teaching the basic skills needed for maintenance and repair work.

Pursuant to a grievance filed in 2000, ILWU argued that under its collective-bargaining agreement with the Employer, the repair and maintenance of the new Everett-based equipment should properly have been assigned to ILWU-represented employees. This claim went to arbitration, and the arbitrator ruled in early 2001 that the maintenance and repair work on the new equipment should be assigned to ILWU. But because there were no available ILWU-represented workers able to perform the work, the Employer instead began paying for two ILWU-represented workers to attend community college for basic coursework. In 2005, at about the time these ILWU-represented employees had completed their coursework, IAM received word from the Employer that the work it had been performing might be reassigned to ILWU. In response, IAM sent a letter threatening to take "all means necessary" to prevent the Employer from transferring the disputed work, and told the Employer

¹ Reach stackers are vehicles used for lifting and stacking shipping containers.

that if the work were transferred, IAM would immediately picket the Everett facility.

B. Work in Dispute

The work in dispute is the maintenance and repair work on SSA Marine's Everett-based stevedoring equipment.

C. Contentions of the Parties

ILWU moves to quash the notice of hearing, arguing that the heart of the dispute is a work preservation claim by ILWU-represented workers at Everett, not a jurisdictional dispute contemplated by Section 8(b)(4)(D) and Section 10(k) of the Act. ILWU contends that the Employer created this dispute by assigning service and maintenance of the new crane and reach stackers to IAM-represented mechanics in violation of the SSA/ILWU collective-bargaining agreement. Therefore, ILWU continues, the Employer is not innocently caught between two rival unions claiming the same work and should not be able to obtain relief under Section 10(k). In the alternative, if the Board declines to quash the notice of hearing, ILWU requests that the mechanics it represents be awarded the work on the basis of its collective-bargaining agreement with the Employer, area and industry practice, the 2001 arbitral award referenced above, and efficiency.

The Employer and IAM argue to the contrary that this is a bona fide jurisdictional dispute and that therefore the notice of hearing should not be quashed. They argue that the Board should award the work to IAM-represented mechanics based on their collective-bargaining agreement, the history of the work in dispute, employer preference and past practice, area practice, skills and training, and efficiency.

D. Applicability of the Statute

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that (1) there are competing claims to the work; (2) there is reasonable cause to believe that Section 8(b)(4)(D) has been violated; and (3) the parties have not agreed on a method for the voluntary adjustment of the dispute. *Carpenters Local 275 (Lymo Construction Co.)*, 334 NLRB 422, 423 (2001); *Teamsters Local 259 (Globe Newspaper Co.)*, 327 NLRB 619, 622 (1999); and *Laborers Local 113 (Super Excavators)*, 327 NLRB 113, 114 (1998).

Evaluating the situation at the time the alleged proscribed activity occurred in 2005, we find that these requirements have been met. There are competing claims to the work because IAM and ILWU both claim that repair and maintenance of the Employer's Everett-based equipment should be assigned to employees they represent. As to the second requirement, to find reasonable cause to believe that Section 8(b)(4)(D) has been violated, we must find evidence that a union has used pro-

scribed means to enforce its claim to the work in dispute, and that it had the proscribed objective of forcing an employer to assign the work to one group of employees rather than to another group of employees. See, e.g., *Stage Employees IATSE Local 39 (Shepard Exposition Services)*, 337 NLRB 721, 723 (2002). We find this requirement is met: IAM admits that it threatened to picket if the Employer assigned the disputed work to ILWU-represented mechanics. Finally, the third requirement has also been met: no party has presented evidence of a method agreed upon by all parties to resolve this dispute voluntarily.

We must also address ILWU's contention that this dispute is at its core about work preservation and that it is therefore not a jurisdictional dispute. In distinguishing between jurisdictional disputes and work preservation disputes, the Board has held that where the employer has unilaterally transferred the disputed work away from the group that had been performing it, the Board will not afford the employer the use of a 10(k) proceeding because the dispute is of the employer's own making. See, e.g., *Machinists District 190 (SSA Terminal)*, 344 NLRB No. 126 (2005) (Board quashed 10(k) notice of hearing where employer "by its own unilateral actions" of assigning work exclusively performed by one group of workers to another group "created a work preservation dispute"); *Seafarers (Recon Refractory & Construction)*, 339 NLRB 825 (2003) (Board quashed 10(k) proceeding where work performed for a decade by one group of employees was suddenly shifted by employer to another group); *Teamsters Local 107 (Safeway Stores)*, 134 NLRB 1320 (1961) (no jurisdictional dispute where employer unilaterally transferred work and union picketed in an effort to preserve contractual work its members had traditionally performed). In all of these cases, the Board quashed the notice of hearing because the employers created the very dispute they were asking the Board to resolve through 10(k) proceedings.

This case, however, differs from those work preservation cases because the Employer did not create the dispute by re-assigning existing work. In coming to this conclusion, we look to the "'real nature and origin of the dispute' in determining whether a jurisdictional dispute exists." *SSA Terminal*, supra, 344 NLRB No. 126, slip op. at 3 (quoting *Teamsters Local 578 (USCP-Wesco)*, 280 NLRB 818, 820 (1986), affd. sub nom. *USCP-Wesco, Inc. v. NLRB*, 827 F.2d 581 (9th Cir. 1987)).

The genesis of this work dispute lies in the Employer's introduction of new stevedoring equipment to the Port of Everett in 2000, specifically the Gottwald crane and two reach stackers. It is undisputed that ILWU-represented employees had not performed any substantial service and maintenance work on Everett-based stevedoring equipment for almost two decades prior to 2000. In fact, ILWU-represented workers stationed at Everett were not qualified to perform service and maintenance work on

the Gottwald crane at the time it was installed at the Port of Everett.² Thus, unlike in the work preservation cases cited above, the work in dispute here was, for all practical purposes, new work. When the Employer assigned this work to its IAM-represented employees, it was not unilaterally transferring work away from workers who had been performing the work, or supplanting one group of employees with another, and therefore the Employer was not creating a dispute. Accordingly, we find that this is not a work preservation dispute, but instead a jurisdictional dispute.

Based on the foregoing, we find that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. Having already also determined that there are competing claims to the work and no agreed-upon method to adjust the dispute voluntarily, we therefore find that the dispute is properly before the Board for determination under Section 10(k), and we deny ILWU's motion to quash.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402, 1410–1411 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certifications and collective-bargaining agreements

The Employer is currently a party to collective-bargaining agreements with both ILWU and IAM. SSA employees represented by IAM are currently working under a collective-bargaining agreement, with a term from July 1, 2002, until April 1, 2006, stating in relevant part that "IAM-represented employees will maintain and repair all equipment owned or leased by SSA in the Puget Sound area."³ The Pacific Coast Longshore Contract Document (PCLCD), a multiemployer agreement with a term from July 1, 2002, through July 1, 2008, governs the work of SSA employees at Everett represented by ILWU. The PCLCD provides, in section 1.71,

² ILWU has argued that mechanics it represented in 2000 did work at the Port of Everett for other companies, but it has not established that these workers were available to the Employer to service and maintain the new machines. As explained above, although one year after the work was originally assigned, ILWU was awarded the work by an arbitrator, there were apparently no ILWU-represented mechanics qualified to do the work at that time, and the Employer sent ILWU-represented workers to community college for basic mechanical education. Those workers attended classes part-time for approximately 3-1/2 years starting in 2001. These mechanics were not ready to begin on-the-job training until sometime in late 2004 or early 2005.

³ This language appeared for the first time in the 2002 contract.

that the contract "applies to the maintenance and repair of all stevedore cargo handling equipment." The PCLCD also contains a work preservation clause with one limitation: Section 1.8 of the PCLCD states work performed by others prior to July 1978 may be subcontracted out.

Both unions have contractual claims which arguably give them a claim to the work in dispute. We therefore find this factor does not favor awarding the work in dispute to employees represented by either union.⁴

2. Employer preference and past practice

The Employer has made it clear that it prefers to assign the work to IAM-represented mechanics. The Employer's maintenance manager, Darrell Stephens, testified that this "preference has been clear since the '50s."

As to the specific work in dispute, past practice favors the use of IAM-represented mechanics. For the past 5 years, all of the work in dispute has been performed by employees represented by IAM. Although ILWU-represented workers may have done similar work in the 1960s and 1970s, the recent past practice is more relevant in resolving a current jurisdictional dispute.

We find that both employer preference and past practice favor awarding the work in dispute to employees represented by IAM.

3. Area and industry practice

Both IAM and ILWU mechanics perform similar repair and maintenance work on the West Coast. On the Puget Sound, much of this work is done by IAM-represented mechanics, although ILWU is responsible for repair and maintenance in at least one Puget Sound facility. The evidence does not establish that this factor favors one union's claim over the other.

4. Relative Skills

As of 2005 when the picketing threat was made, the IAM-represented mechanics had at least 5 years' experience working on the very machinery whose maintenance requirements form the core of this dispute. In 2000, two of those mechanics participated in training sponsored by the crane manufacturer, in which they were familiarized with the contents of operating manuals for the new Everett-based equipment. The evidence also shows that IAM-represented mechanics are provided with an array of educational and reference materials to aid them in updating their skills. ILWU has not shown a comparable level of skill and training. At best, the evidence shows

⁴ The evidence that ILWU obtained an arbitration award in 2001 interpreting identical language in its current bargaining agreement in a manner consistent with ILWU's claim to the work does not materially affect our conclusion that both unions have mutually offsetting contractual claims to the work. In addition, the Board has given little or no weight to arbitration awards when one of the parties to the jurisdictional dispute was not bound thereby. *Teamsters Local 179 (USF Holland, Inc.)*, 334 NLRB 362, 364–365 (2001); *Teamsters Local 952 (Rockwell International)*, 275 NLRB 611, 614 (1985).

that two ILWU-represented employees are qualified to begin on-the-job training in the service and maintenance of the new machinery. We thus find that this factor favors awarding the work in dispute to IAM-represented employees.

5. Economy and efficiency of operations

ILWU argues that it is more economical and efficient to use IWLWU-represented mechanics, who would be based at Everett, rather than IAM-represented mechanics who must commute from Seattle. IAM argues that it is more economical and efficient to use IAM-represented employees because they do not need any additional on-the-job training. We find that this factor does not favor awarding the work in dispute to employees represented by either union.

Conclusion

After considering all the relevant factors, we conclude that employees represented by IAM are entitled to perform the work in dispute. We reach this conclusion relying on employer preference, past practice, and relative skills. In making this determination, we are awarding the work to employees represented by IAM, not to the Union

or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute:

Employees of SSA Marine represented by International Association of Machinists and Aerospace Workers, District Lodge 160, Local Lodge 289, are entitled to perform maintenance and repair work on SSA Marine's Everett-based stevedoring equipment.

Dated, Washington, D.C. June 30, 2006

Robert J. Battista,	Chairman
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Wilma B. Liebman,	Member
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Peter N. Kirsanow,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD